

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSHUA WITHERS,
Plaintiff,

- against -

CBS RADIO INC.
Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Joshua Withers (“Withers” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant CBS Radio Inc. (“CBS” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of American heavy metal band Metallica owned and registered by Withers, a Los Angeles based photojournalist. Accordingly, Withers seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides and transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Withers is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 4073 Madison Avenue, Culver City, CA 90232. Withers has won numerous photograph awards including but not limited to the 2015 Danny Clinch Concert Photography Contest Winner, the 2014 Ultimate Music Moment Photography Contest Winner, and the 2012 Communication Arts Award of Excellence in Photography. Withers's photographs have appeared in galleries around the United States including the Laguna Arts Museum Southern California Artist Group Show and the Group Show at Harold's Gallery in Los Angeles, California.

6. Upon information and belief, CBS is a corporation duly organized and existing under the laws of the State of Delaware, with a principal place of business at 1271 Avenue of the Americas, New York, New York 10020. Upon information and belief, CBS is registered with the New York Department of State, Divisions of Corporation to do business in the State of New York. At all times material hereto, CBS has owned and operated the website at the URL: www.Kool.CBSLocal.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Withers photographed the American heavy metal band Metallica in concert (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Withers is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given United States Copyright number of VA 1-860-833.

B. Defendant Infringing Activities

10. Upon information and belief, on or about July 15, 2014 Defendant ran an article on the Website entitled *What is Metallica going to do Now?* See <http://kool.cbslocal.com/2014/07/15/video-what-is-metallic-going-to-do-now>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

11. Defendant did not license the Photograph from Plaintiff for its article nor did Defendant have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST CBS)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Defendant infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Defendant is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;

2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendants profits, gains or advantages of any kind attributable to Defendants infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;

5. That Plaintiff be awarded pre-judgment interest; and

6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
November 15, 2016

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